

## **REMARKS**

### **SUMMARY**

Claims 1-67 have been rejected in the above-identified Office Action. Claims 1-4, 8, 11-13, 30-33, 35, 37-38, 41-44, 47-48 and 51-53 have been amended, and claims 9-10, 14-29, 36, 49-50 and 54-67 have been cancelled in this paper. Reconsideration of the application is respectfully requested.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 101**

In “Claim Rejections – 35 USC § 101” on pages 2 of the above-identified Office Action, claims 14-40 were rejected under 35 USC § 101 for being directed to nonstatutory subject matter. In particular, the Examiner stated that these claims are directed to “apparatus” and “system” that fails to include hardware element and therefore would be reasonably be interpreted by those skilled in the art as software.

Claims 14-29 have been cancelled, which renders their rejections moot.

Applicants have amended claim 30 to incorporate a processor which is understood by people skilled in the art as a physical element and the amendment therefore renders claim 30 and its dependent claims 31-40 patentable under 35 USC § 101.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

In “claim Rejections-35 USC § 102” on page 3 of the above of the above-identified Office Action, claim 1-6, 9, 14-17, 22-25, 30-34, 41-46 and 49 were rejected under 35 USC § 102 (e) as being unpatentable over U.S. Patent Application Publication No. 2005/009165 (hereinafter Lection).

In “claim Rejections-35 USC § 102” on page 6 of the above of the above-identified Office Action, claim 54 and 61 were rejected under 35 USC § 102 (e) as being unpatentable over U.S. Patent Application Publication No. 2004/0025067 (hereinafter Gary).

Claims 9, 14-17, 22-25, 49, 54 and 61 have been cancelled, which renders their rejections moot.

Notwithstanding Applicants respectfully disagree with above reading by the Examiner, independent claim 1 has been amended to further facilitate prosecution of the instant application, by partially incorporating features from original claims 9 and 10 which were rejected under 35

USC 103(a) in the above identified Office Action. Therefore, remarks commenting the patentability of the amended claims are presented in the following section.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

1. In “Claim Rejections – 35 USC § 103” on pages 8 of the above-identified Office Action, claim 10-13, 19-21, 27-29, 36-38 and 50-53 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion in view of U. S. Patent No. 6,799,208 (hereinafter Forrest).

Claims 19-21, 27-29 and 36 have been cancelled, which renders their rejection moot.

Independent claim 1 has been amended to include features from original claims 9 and 10 and recite a method comprising:

“determining, by a computing device, a configuration of a system of resources;  
determining, by the computing device, processing requirements of an application running on the system of resources utilizing an application characterization database;  
analyzing, by the computing device, the determined configuration and requirements in order to attempt to optimize the performance of the application;  
generating, by the computing device, optimization suggestions from the analysis;  
and  
dynamically causing, by the computing device, applying of the optimization suggestions;  
wherein the application characterization database includes:  
a static application characterization database storing information regarding fixed characteristics of the application; and  
a dynamic application characterization database storing information regarding mutable characteristics of the application, wherein the dynamic application characterization database is empty at initialization of the application characterization database and is gradually established as the application is executed.”

In the above identified Office Action, the Examiner stated that Lektion discloses all elements of original claims 1 and 9. And Forrest was cited by the Examiner to read on features in original claim 10.

Lektion discloses a solution for managing processes (read by the Examiner as the application in claim 1) through which resources are allocated to processes based on determination of the available resources and an anticipated benefit for each process. Forrest discloses a method to manage resources wherein each activity (read by the Examiner as the application in claim 1) can specify one or more configurations. In particular, the Examiner cited

the abstract and col.18, lines 20-31 of Forrest as teaching the dynamic application characterization database in original claim 10.

The word “dynamically” is recited in both the abstract and col.18 of Forrest. However, simply reciting this word does not mean that Forrest discloses the “dynamic application characterization database” in amended claim 1. The cited portions of Forrest disclose that an activity may have multiple specified configurations which describe various sets of preferred resources required to perform the activity, and these configurations may be ranked according to preference, and the activity may dynamically switch from one configuration to another.

But, no matter how many preferred configurations the activity has and how the activity may switch in between the configurations, those configurations are fixed characteristics of the activity and are specified before the activity is executed. Such multiple configurations at most could read on the static database in amended claim 1. In contrast, the information stored in the dynamic application characterization database in amended claim 1 is regarding mutable characteristics of the application. Moreover, “the dynamic application characterization database is empty during initialization of the application characterization database and is gradually established as the application is executed” as recited in claim 1.

Accordingly, Applicants submit that the combination of Lektion and Forrest fails to establish a *prima facie* case of amended claim 1, and amended claim 1 is therefore patentable over Lektion in view of Forrest under 35 USC §103(a).

Amended claims 30 and 41 contain generally similar recitations as claim 1. Therefore, for at least similar reasons set forth for claim 1, Applicants submit claims 30 and 41 are also patentable over Lektion in view of Forrest under 35 USC §103 (a).

Claims 2-6, 11-13, 31-34, 37-38, 42-46 and 50-53 depend from amended claim 1, 30 or 41, incorporating their recitations respectively. Therefore, for at least similar reasons set forth for the corresponding independent claims, Applicants submit that claims 2-6, 11-13, 31-34, 37-38, 42-46 and 50-53 are patentable over Lektion in view of Forrest under 35 USC §103 (a).

2. In “Claim Rejections – 35 USC § 103” on pages 7 of the above-identified Office Action, claims 7-8, 18, 26, 35, 39-40, and 47-48 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion.

Claims 18 and 26 have been cancelled, which renders their rejections moot.

Claims 7-8, 35, 39-40 and 47-48 depend from amended claim 1, 30 or 41, incorporating their recitations respectively. Therefore, for at least similar reasons set forth for the corresponding independent claims, Applicants submit that claims 7-8, 35, 39-40 and 47-48 are patentable over Lektion under 35 USC §103 (a).

3. In “Claim Rejections – 35 USC § 103” on pages 9 of the above-identified Office Action, claims 11, 20, 28, 37 and 51 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion in view of Forrest and further in view of common knowledge.

Claims 20 and 28 have been cancelled, which renders their rejections moot.

The common knowledge cited by the Examiner to read on that optimization steps are done at compile time, but fails to cure the deficiency of Lektion and Forrest. Claims 11, 37 and 51 depend from amended claim 1, 30 or 41, incorporating their recitations respectively. Therefore, for at least similar reasons set forth for the corresponding independent claims, Applicants submit that claims 11, 37 and 51 are patentable over Lektion in view of Forrest and further in view of common knowledge under 35 USC §103 (a).

4. In “Claim Rejections – 35 USC § 103” on pages 9 of the above-identified Office Action, claims 12, 21, 29, 38 and 52 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion.

Claims 21 and 29 have been cancelled, which renders their rejections moot.

Claims 12, 38 and 52 depend from amended claim 1, 30 or 41, incorporating their recitations respectively. Therefore, for at least similar reasons set forth for the corresponding independent claims, Applicants submit that claims 12, 38 and 52 are patentable over Lektion under 35 USC §103 (a).

5. In “Claim Rejections – 35 USC § 103” on pages 10 of the above-identified Office Action, claims 13 and 53 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion.

Claims 13 and 53 depend from amended claim 1 or 41, incorporating their recitations respectively. Therefore, for at least similar reasons set forth for the corresponding independent claims, Applicants submit that claims 13 and 53 are patentable over Lektion under 35 USC §103 (a).

6. In “Claim Rejections – 35 USC § 103” on pages 10 of the above-identified Office Action, claims 55-57 and 62-64 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion in view of Gary.

Claims 55-57 and 62-64 have been cancelled, which renders their rejections moot.

7. In “Claim Rejections – 35 USC § 103” on pages 11 of the above-identified Office Action, claims 58-60 and 65-67 were rejected under 35 USC § 103 (a) as being unpatentable over Lektion in view of Gary.

Claims 58-60 and 65-67 have been cancelled, which renders their rejections moot.

### CONCLUSION

In view of the foregoing, reconsideration and allowance of pending claims are solicited. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 381-8819. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,  
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